

IP 04-0107-CR 1 B/F USA v Huston
Magistrate Kennard P. Foster

Signed on 04/25/2006

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. IP 04-107-CR-01 (B/F)
)	
TORREY HUSTON,)	
)	
Defendant.)	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable Sarah Evans Barker, Judge, on April 20, 2006, designating this Magistrate Judge to conduct hearings on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on April 20, 2006, and to submit to Judge Barker proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings were held on April 25, 2006 in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*. Mr. Huston appeared in person with his appointed counsel, James McKinley, Office of the Indiana Federal Community Defender. The government appeared by Barry Glickman, Assistant United States Attorney. U. S. Parole and Probation appeared by Dwight Wharton, U. S. Parole and Probation officer, who participated in the proceedings.

On April 25, 2006, the Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. James McKinley, Office of Indiana Federal Community Defender, was present and appointed by the Court to represent Mr. Huston in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Huston and his counsel. The Magistrate Judge summarized the specification of the alleged violations and, further, Mr. Huston and his counsel informed the Court that they had read and understood the specification of violations and waived further reading thereof.

3. Mr. Huston was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition.

4. Mr. Huston would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. Mr. Huston had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. If the preliminary hearing resulted in a finding of probable cause that Mr. Huston had violated an alleged condition or conditions of his supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Barker's designation entered on April 20, 2006.

7. Mr. McKinley stated that Torrey Huston would stipulate there is a basis in fact to hold him on the specifications of violation of supervised release set forth in the Petition. Mr. Huston executed a written waiver of the preliminary examination, which was accepted by the Court.

8. Mr. Huston, by counsel, stipulated that he committed specifications of violations set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed with the Court as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	The defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.
2	The defendant shall participate in a program of testing and/or treatment for substance abuse and shall pay a portion of the fees of treatment as directed by the probation officer.

On July 21, 2005, Mr. Huston began his second period of supervised release following a revocation for ongoing noncompliance, which included cocaine usage. On that same date, he was designated and surrendered to the Volunteers of America (VOA) Community Corrections Center per his conditions of release. While a resident of that facility, he was arrested on a 2002 probation violation warrant that originated in St. Louis, Missouri. His state probation in that county was dismissed and he was given credit for time served (please see petitions dated 10/4/05 and 10/12/05). On October 29, 2005, Mr. Huston was released from state custody and returned to the Southern District of Indiana. On October 31, 2005, he reported to the probation officer as instructed and admitted he used cocaine immediately following his release in St. Louis. A urine specimen was obtained, which subsequently tested positive for cocaine (please see Report on Offender dated 11/9/2005).

On January 20, 2006, Mr. Huston completed his residency at VOA per his conditions of release. At that time, he was employed full-time and he was enrolled in weekly substance abuse counseling and testing. The defendant failed to report for random urine collection on the following dates: 3/18/06 and 4/3/06. In addition, he failed to report for two scheduled substance abuse counseling sessions in April 2006. It was also learned through collateral contact with his employer that Mr. Huston neither called nor reported for work since April 1, 2006. He was subsequently terminated for said reasons. On April 17, 2006, the defendant submitted a urine specimen that tested

positive for cocaine. On April 19, 2006, he reported to the probation officer and admitted he had been using cocaine on and off since April 2, 2006. The defendant reported his last use of the drug occurred on April 18, 2006. A urine sample was obtained and the results were positive for cocaine. During the aforementioned office visit, Mr. Huston also advised he stopped reporting for work because he had relapsed and he could not work in that condition.

The Court placed Mr. Huston under oath and directly inquired of Mr. Huston whether he admitted violations of the specifications of his supervised release set forth above. Mr. Huston stated that he admitted the above violations as set forth. The Court now finds there is a basis in fact for his admissions and accepts same.

Counsel for the parties further stipulated to the following:

- 1) Mr. Huston has a relevant criminal history category of IV, U.S.S.G. §7B1.4(a).
- 2) The most serious grade of violation committed by Mr. Huston constitutes a Grade B violation, pursuant to U.S.S.G. §7B1.1(b).
- 3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Mr. Huston is 12 to 18 months.
- 4) The parties did not agree on the appropriate disposition of the case.

9. The defendant, by counsel, and the government each presented evidence regarding appropriate disposition of the case.

The Court having heard the evidence and/or arguments of Mr. Huston, his counsel and the government, now finds that Mr. Huston violated the specified conditions of supervised release as delineated above in the Petition to Revoke his supervised release.

Mr. Huston's supervised release is therefore **REVOKED** and he is sentenced to the custody of the Attorney General or his designee for a period of 12 months, with no supervised release to

follow incarceration. The Court recommends that the defendant be subject to the Bureau of Prisons' extensive drug and alcohol treatment program during commitment.

The Magistrate Judge requests that Mr. Wharton, U. S. Parole and Probation Officer, prepare for submission to the Honorable Sarah Evans Barker, Judge, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

You are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge pursuant to Title 28, U.S.C. §636(b)(1)(B) and (C) and Rule 72(b) of the *Federal Rules of Civil Procedure*. You shall have within ten days after being served a copy of this Report and Recommendation to serve and file written objections to the proposed findings of facts and conclusions of law and recommendations of this Magistrate Judge. If written objections to the Magistrate Judge's proposed findings of fact and recommendations are made, the District Judge will make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which an objection is made.

The District Court may refuse to accept the stipulations and waivers and conduct a revocation hearing pursuant to Title 18 U.S.C. §3561 *et seq.* and Rule 32.1 of the *Federal Rules of Criminal Procedure* and may reconsider the Magistrate Judge's Report and Recommendation, including making a *de novo* determination fo any portion f the Report or specified proposed findings or recommendation upon which he may reconsider.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above recommendation revoking Torrey Huston's supervised release and the sentence imposed of imprisonment of 12 months in the custody of the Attorney General or his designee; that the

defendant be subject to the Bureau of Prisons' extensive drug and alcohol treatment program during commitment; and that at the conclusion of Mr. Huston's incarceration, he not be subject to supervised release.

IT IS SO RECOMMENDED this 25th day of April, 2006.

Kennard P. Foster, Magistrate Judge
United States District Court
Southern District of Indiana

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